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September 27, 2002

Missouri Public Service Commission
Attn: Secretary of the Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Mo. 65102-0360

FILED³
SEP 27 2002
Missouri Public
Service Commission

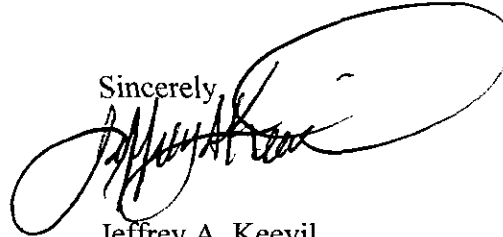
RE: Case Nos. GR-2001-382, GR-2000-425, GR-99-304 and GR-98-167

Dear Mr. Roberts:

Enclosed for filing in the above-referenced cases are an original and the appropriate number of copies of a RESPONSE TO MGE'S APPLICATION FOR REHEARING AND MOTION FOR RECONSIDERATION on behalf of Riverside Pipeline Company, L.P., Mid-Kansas Partnership and Kansas Pipeline Company.

Copies of this filing have on this date been mailed or hand-delivered to counsel of record. Thank you for your attention to this matter.

Sincerely,



Jeffrey A. Keevil

JAK/er
Enclosures
cc: counsel of record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
SEP 27 2002
Missouri Public
Service Commission

In the Matter of Missouri Gas Energy's)
Purchased Gas Adjustment Tariff Revisions) Case No. GR-2001-382
To be Reviewed in its 2000-2001 Actual)
Cost Adjustment.)

In the Matter of Missouri Gas Energy's)
Purchased Gas Cost Adjustment Factors) Case No. GR-2000-425
To be Reviewed in its 1999-2000 Actual)
Cost Adjustment.)

In the Matter of Missouri Gas Energy's)
Purchased Gas Cost Adjustment Factors) Case No. GR-99-304
To be Reviewed in its 1998-1999 Actual)
Cost Adjustment.)

In the Matter of Missouri Gas Energy's)
Purchased Gas Cost Adjustment Tariff) Case No. GR-98-167
Revisions to be Reviewed in its 1997-1998)
Actual Cost Adjustment.)

**RESPONSE TO MGE'S APPLICATION FOR REHEARING
AND MOTION FOR RECONSIDERATION**

COME NOW Riverside Pipeline Company, L.P. ("RPC"), Mid-Kansas

Partnership ("MKP") and Kansas Pipeline Company ("KPC") (collectively

"Intervenors"), and for their response to Missouri Gas Energy's ("MGE's") application

for rehearing and motion for reconsideration ("MGE's Application"), respectfully state as

follows:

Bifurcation of Hearing

1. In its Order Consolidating Cases, Finding Jurisdiction to Proceed, and
Directing the Parties to File a Proposed Procedural Schedule issued on September 10,
2002 ("September 10 Order"), the Commission stated that:

... it is mindful of the uncertainty surrounding the MKP/RPC contract adjustment because of the pending judicial appeal. **The Commission does not wish to needlessly engage the time and resources of the Commission and the parties by pushing forward on that issue at this time.** Staff's proposed adjustment based on imputing income to MGE for the release of capacity on the Kansas Pipeline, and its proposed disallowance based on MGE's purchasing practices related to hedging and use of storage capacity, are themselves substantial issues that may require the parties and the Commission to expend substantial time and resources. (emphasis added)

Likewise, Intervenors do not wish to have the time and resources of the Commission and the parties, including themselves, needlessly engaged by pushing forward on that issue at this time. For this reason, and the other reasons discussed below, Intervenors strongly disagree with that portion of MGE's Application under the section titled "Bifurcation of Hearing" and the Commission should reject the relief related thereto requested by MGE.

2. In MGE's Reply to "Staff's Response" filed in Case No. GR-2001-382 on or about July 31, 2002, MGE stated: "Given that there presumably will be a judicial resolution of the question whether the stipulation discussed in Case No. GR-96-450 bars further disallowances for imprudence, **MGE's position is that it would be a significant waste of the resources of several companies, the Staff, the Public Counsel, and the Commission, to proceed to hearing at the Commission again while that question is pending in the courts**" (emphasis added) and that "MGE has already indicated that it is willing to proceed to trial on the non-MKP/RPC issues in Case No. GR-2001-382. By 'non-MKP/RPC issues' MGE means the issues [other than the MKP/RPC contract adjustment]. However, **if MGE is also required to proceed to trial simultaneously on the MKP/RPC issues . . . MGE will require a longer procedural schedule because significantly more material will obviously have to be covered in such a case.**" (emphasis added). In other words, the September 10 Order essentially gave MGE what it

asked for in MGE's Reply of July 31, 2002. Nothing has changed since that filing to justify or support MGE's radical change of position reflected in MGE's Application under the Bifurcation of Hearing section. Intervenors agree with the position expressed in MGE's July 31, 2002 Reply, that it would be a significant waste of resources of all parties and the Commission to proceed with a hearing on the MKP/RPC contract adjustment while issues concerning such adjustment are pending in the courts and that to proceed at the Commission on such proposed adjustment would require a longer procedural schedule – a significantly longer procedural schedule – due to the additional material to be covered and the amount of the proposed adjustment(s). As the September 10 Order recognized, if the court decides that the stipulation and agreement discussed in GR-96-450 precludes future prudence review of the MKP/RPC contract, the MKP/RPC contract adjustment disappears from these cases. Even Staff, in its July 26, 2002, "Response", recognized that "[i]n such a situation, proceedings in [these] cases on the issue will be wasted efforts." Proceeding further at this time on Staff's proposed MKP/RPC contract adjustment is both impractical and will constitute an avoidable and significant waste of resources of all parties and the Commission.

3. Intervenors oppose consolidation of these four cases, but were willing to live with consolidation on the basis of the procedure set forth in the Commission's September 10 Order; namely, that no further action would be taken concerning Staff's proposed MKP/RPC contract adjustment pending a final, non-appealable resolution of Case No. GR-96-450, certain issues of which are currently pending on appeal in the courts. However, to proceed with Staff's proposed MKP/RPC contract adjustment, especially on the schedule suggested in MGE's Application, would deprive Intervenors of

their right to a fair, meaningful opportunity to prepare and present their case and accordingly constitute a violation of their rights to due process. The Commission should bear in mind that Staff has already conducted its audit in each of these cases. Staff's audits have historically taken approximately nine months in each ACA case. Aside from the stipulation issue which will again be at issue if the Commission proceeds with Staff's proposed MKP/RPC contract adjustment at this time (the Commission will recall from Case No. GR-96-450 that the MKP/RPC contract adjustment contains several issues in addition to the stipulation issue), the calculations of Staff's proposed MKP/RPC contract adjustments, and Staff's support therefor, and Staff's rationale or theories, in each of the four cases, will need to be examined by expert witnesses for Intervenors – most if not all of whom will have to come from out of state and be secured and schedules confirmed. To accomplish this, additional discovery of Staff will be required to be performed, possibly including depositions. While Staff has already conducted its audits, and case preparation may not be a significant problem for MGE since it already possesses much of the relevant discoverable material (since it is MGE's accounts and practices which have been audited by Staff and are at issue), Intervenors have not had the opportunity to conduct their discovery and prepare their cases, given the progress of GR-96-450. To expect Intervenors to proceed to hearing on Staff's proposed MKP/RPC contract adjustment in *four* consolidated cases as posited in MGE's Application, especially considering that Staff itself takes approximately nine months to conduct *one* ACA audit, when such an audit does not even include preparation of testimony, is unreasonable on its face. For these reasons, to proceed with Staff's proposed MKP/RPC contract adjustment, especially on the schedule suggested in MGE's Application¹, would deprive Intervenors

¹ Any schedule which included the MKP/RPC contract adjustment would require **substantial** expansion of

of their due process rights. Therefore, contrary to MGE's assertion in its Application, there would be a material adverse effect from proceeding to hearing on all issues, if "all issues" includes Staff's proposed MKP/RPC contract adjustment.

Furthermore, the Commission will recall that in Case No. GR-96-450, when the only contested adjustment was the Staff's proposed MKP/RPC contract adjustment, the hearing took almost five full days. To do as MGE now suggests would likely lengthen the hearing in these consolidated cases well beyond five days since, as recognized by the Commission in its September 10 Order, "Staff's proposed adjustment based on imputing income to MGE for the release of capacity on the Kansas Pipeline, and its proposed disallowance based on MGE's purchasing practices related to hedging and use of storage capacity, are themselves substantial issues that may require the parties and the Commission to expend substantial time and resources." Therefore, not only would MGE's current request necessitate that the hearing be much farther in the future than next spring, the hearing itself would be much lengthier. Intervenors would note that, under the procedure set forth in the September 10 Order, a hearing on what the Commission refers to as the "first portion" of the schedule (*i.e.*, matters other than the MKP/RPC contract adjustment) sometime next spring is not out of the question, depending on how smoothly the discovery process proceeds.

4. Although in MGE's Application MGE takes issue with the "bifurcation" aspect of the Commission's September 10 Order, MGE's real complaint seems to be with the Commission's indication that it "will issue a single Report and Order after completion of both portions of the hearing," assuming that a second portion is even necessary.

MGE's theorized schedule which provided for a hearing in the spring of 2003. To include the MKP/RPC contract adjustment in such a schedule would be grossly unreasonable.

Obviously, there will be no need for a second hearing if the court decides that the stipulation and agreement discussed in GR-96-450 precludes future prudence review of the MKP/RPC contract, and as stated above, in that event, to do as MGE now requests would result in a waste of time and resources for all concerned. If the court decides that the stipulation and agreement discussed in GR-96-450 precludes future prudence review of the MKP/RPC contract the Commission will be at liberty to quickly issue an order covering the "first portion" of the hearing, which presumably will have already taken place. Furthermore, since MGE's real complaint seems to be with the single order aspect of the September 10 Order rather than the bifurcation aspect, the Commission could consider issuing an order after the "first portion" of the hearing which addresses only those adjustments and matters included in the first portion of the hearing as set forth in the September 10 Order. The only problem with this approach, however, is that it would raise certain issues regarding whether the Commission's order was final and appealable.

5. Intervenor also submit that there are additional legal reasons why Staff is barred from pursuing its MKP/RPC contract adjustment in these cases. Taking the approach reflected in the September 10 Order -- not proceeding on that proposed adjustment pending a final, non-appealable resolution of Case No. GR-96-450 -- avoids the need for the parties and the Commission to address those reasons at this time, since the court decision in the appeal of Case No. GR-96-450 may render them moot. However, Intervenor submit that Staff is barred from pursuing its MKP/RPC contract adjustment in these cases since the proposed adjustment in these cases is based on and arises from the same package of contracts (the same transaction), between the same parties, as was Staff's proposed adjustment in GR-96-450. The negotiation and execution

of the package of contracts having taken place in 1995, no new facts and no changed circumstances regarding the negotiation and execution thereof have arisen since GR-96-450. Staff was required to bring forth all evidence and points in support of its proposed adjustment, which it could have reasonably brought, at the time of GR-96-450 and to raise all matters which arose prior to the hearing in GR-96-450 in GR-96-450. Staff cannot now change its legal theory and relitigate the same adjustment.

6. Also, while certain issues regarding Staff's proposed MKP/RPC contract adjustment are pending in the courts, the Commission's jurisdiction over and ability to legally proceed regarding the MKP/RPC contract adjustment is at best questionable and at worst absent. Taking the approach taken in the September 10 Order avoids this question and avoids needlessly creating further legal problems.

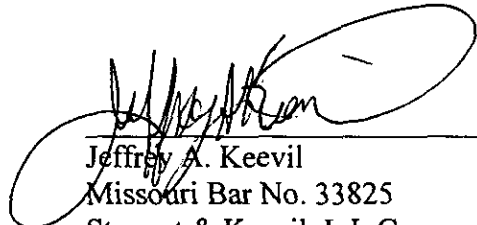
Filed Rate Doctrine

7. MGE's Application also contained a section titled "Filed Rate Doctrine." Intervenor filed an Application for Rehearing, Reconsideration and/or Clarification in these cases on September 19, 2002, in which they addressed the filed rate doctrine, so Intervenor would refer the Commission to that filing for their arguments and positions concerning the filed rate doctrine.

WHEREFORE, Intervenor respectfully request the Commission grant the relief requested in their Application for Rehearing, Reconsideration and/or Clarification filed in these cases on September 19, 2002, concerning the filed rate doctrine; in the event that the Commission does not determine that the filed rate doctrine precludes the Commission from considering the Staff's proposed MKP/RPC contract adjustment, for all of the reasons stated above, Intervenor respectfully request the Commission issue its order

affirming its September 10 Order as to the matter of bifurcating the procedural schedule and rejecting the relief related thereto requested by MGE in its application.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served by placing same in first-class mail, postage paid, or by hand-delivery, to counsel for parties of record on this 27th day of September, 2002.

